

By: Naishtat

H.B. No. 3383

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures regarding certain criminal defendants who
3 are or may be persons with mental illness or mental retardation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 16.22, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 16.22. EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED
8 OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Not later
9 than 72 hours after receiving evidence or a statement that may
10 establish reasonable cause to believe that a defendant committed to
11 the sheriff's custody has a mental illness or is a person with
12 mental retardation, the sheriff shall notify a magistrate of that
13 fact. A defendant's behavior or the result of a prior evaluation
14 indicating a need for referral for further mental health or mental
15 retardation assessment must be considered in determining whether
16 reasonable cause exists to believe the defendant has a mental
17 illness or is a person with mental retardation. On a determination
18 that there is reasonable cause to believe that the defendant has a
19 mental illness or is a person with mental retardation, the
20 magistrate, except as provided by Subdivision (2), shall order an
21 examination of the defendant by the local mental health or mental
22 retardation authority or another [~~disinterested expert experienced~~
23 ~~and~~] qualified [~~in~~] mental health or mental retardation expert to
24 determine whether the defendant has a mental illness as defined by

1 Section 571.003, Health and Safety Code, or is a person with mental
2 retardation as defined by Section 591.003, Health and Safety Code.

3 (2) The magistrate is not required to order an
4 examination described by Subdivision (1) if the defendant in the
5 year preceding the defendant's applicable date of arrest has been
6 evaluated and determined to have a mental illness or to be a person
7 with mental retardation by the local mental health or mental
8 retardation authority or another mental health or mental
9 retardation expert described by Subdivision (1). A court that
10 elects to use the results of that evaluation may proceed under
11 Subsection (c).

12 (3) If the defendant fails or refuses to submit to an
13 examination required under Subdivision (1), the magistrate may
14 order the defendant to submit to an examination in a mental health
15 facility determined to be appropriate by the local mental health or
16 mental retardation authority for a reasonable period not to exceed
17 21 days. The magistrate may order a defendant to a facility
18 operated by the [Texas] Department of State [~~Mental~~] Health
19 Services or the Department of Aging and Disability Services [~~and~~
20 ~~Mental Retardation~~] for examination only on request of the local
21 mental health or mental retardation authority and with the consent
22 of the head of the facility. If a defendant who has been ordered to
23 a facility operated by the [Texas] Department of State [~~Mental~~]
24 Health Services or the Department of Aging and Disability Services
25 [~~and Mental Retardation~~] for examination remains in the facility
26 for a period exceeding 21 days, the head of that facility shall
27 cause the defendant to be immediately transported to the committing

1 court and placed in the custody of the sheriff of the county in
2 which the committing court is located. That county shall reimburse
3 the [~~Texas Department of Mental Health and Mental Retardation~~]
4 facility for the mileage and per diem expenses of the personnel
5 required to transport the defendant calculated in accordance with
6 the state travel regulations in effect at the time.

7 (b) A written report of the examination shall be submitted
8 to the magistrate not later than the 30th day after the date of any
9 [~~within 30 days of the~~] order of examination issued in a felony case
10 and not later than the 10th day after the date of any order of
11 examination issued in a misdemeanor case, and the magistrate shall
12 provide [~~furnish~~] copies of the report to the defense counsel and
13 the prosecuting attorney. The report must [~~shall~~] include a
14 description of the procedures used in the examination and the
15 examiner's observations and findings pertaining to:

16 (1) whether the defendant is a person who has a mental
17 illness or is a person with mental retardation;

18 (2) whether there is clinical evidence to support a
19 belief that the defendant may be incompetent to stand trial and
20 should undergo a complete competency examination under Subchapter
21 B, Chapter 46B; and

22 (3) recommended treatment.

23 (c) After the court receives the examining expert's report
24 relating to the defendant under Subsection (b) or elects to use the
25 results of an evaluation described by Subsection (a)(2), the court
26 may, as applicable [~~resume~~]:

27 (1) resume criminal proceedings against the

1 defendant, including any appropriate proceedings related to the
2 defendant's release on personal bond under Article 17.032; or

3 (2) resume or initiate competency proceedings, if
4 required, as provided by Chapter 46B or other proceedings affecting
5 the defendant's receipt of appropriate court-ordered mental health
6 or mental retardation services, including proceedings related to
7 the defendant's receipt of outpatient mental health services under
8 Section 574.034, Health and Safety Code.

9 (d) Nothing in this article prevents the court from, pending
10 an evaluation of the defendant as described by this article:

11 (1) releasing a mentally ill or mentally retarded
12 defendant from custody on personal or surety bond; or

13 (2) ordering an examination regarding the defendant's
14 competency to stand trial.

15 SECTION 2. Article 17.032(a), Code of Criminal Procedure,
16 is amended to read as follows:

17 (a) In this article, "violent offense" means an offense
18 under the following sections of the Penal Code:

19 (1) Section 19.02 (murder);

20 (2) Section 19.03 (capital murder);

21 (3) Section 20.03 (kidnapping);

22 (4) Section 20.04 (aggravated kidnapping);

23 (5) Section 21.11 (indecent with a child);

24 (6) ~~[Section 22.01(a)(1) (assault)];~~

25 ~~[(7)]~~ Section 22.011 (sexual assault);

26 (7) ~~[(8)]~~ Section 22.02 (aggravated assault);

27 (8) ~~[(9)]~~ Section 22.021 (aggravated sexual assault);

1 (9) [~~(10)~~] Section 22.04 (injury to a child, elderly
2 individual, or disabled individual); or

3 (10) [~~(11)~~] Section 29.03 (aggravated robbery).

4 SECTION 3. Articles 46B.072, 46B.075, 46B.076, 46B.078
5 through 46B.083, and 46B.085, Code of Criminal Procedure, are
6 amended to read as follows:

7 Art. 46B.072. RELEASE ON BAIL. (a) If the court determines
8 that a defendant found incompetent to stand trial is not a danger to
9 others and may be safely treated on an outpatient basis with [~~for~~]
10 the specific objective [~~purpose~~] of attaining competency to stand
11 trial, the court may release the defendant on bail or continue the
12 defendant's release on bail, subject to conditions reasonably
13 related to assuring public safety and the effectiveness of the
14 defendant's treatment.

15 (b) The court shall order a defendant released on bail under
16 Subsection (a) to participate in an outpatient treatment program
17 for a period not to exceed 120 days.

18 Art. 46B.075. TRANSFER OF DEFENDANT TO FACILITY OR
19 TREATMENT PROGRAM. (a) An [~~A commitment~~] order issued under
20 Article 46B.072 or 46B.073 [~~this subchapter~~] must place the
21 defendant in the custody of the sheriff for transportation to the
22 facility or treatment program, as applicable, in which the
23 defendant is to receive treatment for purposes of competency
24 restoration [~~be confined~~].

25 (b) The Department of State Health Services shall:

26 (1) within 72 hours of the issuance of an order under
27 Section 46B.072 or 46B.073 accept the transfer of a defendant found

1 incompetent to stand trial under Subchapter C to:

2 (A) a mental health facility or residential care
3 facility; or

4 (B) an outpatient treatment program; and

5 (2) provide to the defendant competency restoration
6 services in the least restrictive appropriate setting.

7 Art. 46B.076. COURT'S ORDER. (a) If the defendant is found
8 incompetent to stand trial, not later than the date of the order of
9 commitment or of release on bail, as applicable, the court shall
10 send a copy of the order to the facility to which the defendant is
11 committed or the treatment program to which the defendant is
12 released [~~not later than the date the defendant is committed to the~~
13 ~~facility~~]. The court shall also provide to the facility or program
14 copies of the following made available to the court during the
15 incompetency trial:

16 (1) reports of each expert;

17 (2) psychiatric, psychological, or social work
18 reports that relate to the mental condition of the defendant;

19 (3) documents provided by the attorney representing
20 the state or the attorney representing the defendant that relate to
21 the defendant's current or past mental condition;

22 (4) copies of the indictment or information and any
23 supporting documents used to establish probable cause in the case;

24 (5) the defendant's criminal history record; and

25 (6) the addresses of the attorney representing the
26 state and the attorney representing the defendant.

27 (b) The court shall order that the transcript of all medical

1 testimony received by the jury or court be promptly prepared by the
2 court reporter and forwarded to the proper facility or treatment
3 program.

4 Art. 46B.078. CHARGES SUBSEQUENTLY DISMISSED. If the
5 charges pending against a defendant are dismissed, the applicable
6 ~~[committing]~~ court shall send a copy of the order of dismissal to
7 the sheriff of the county in which the ~~[committing]~~ court is located
8 and to the head of the facility or the provider of the outpatient
9 treatment program, as appropriate ~~[in which the defendant is held]~~.
10 On receipt of the copy of the order, the facility or treatment
11 program shall discharge the defendant into the care of the sheriff
12 for transportation in the manner described by Article 46B.082.

13 Art. 46B.079. RETURN TO ~~[COMMITTING]~~ COURT. (a) A
14 defendant committed or released on bail under this subchapter shall
15 be returned to the applicable ~~[committing]~~ court as soon as
16 practicable after the date of expiration of ~~[on which]~~ the period
17 for restoration specified by the court under Article 46B.072 or
18 46B.073 ~~[defendant's term of commitment expires]~~.

19 (b) A defendant committed or released on bail under this
20 subchapter whose restoration period ~~[term of commitment]~~ has not
21 yet expired shall be returned to the ~~[committing]~~ court as soon as
22 practicable after the 15th day following the date on which the
23 parties receive service on any report filed under Article
24 46B.080(b) regarding the defendant's ability to attain competency,
25 except that, if a party objects to the findings of the report and
26 the issue is set for a hearing under Article 46B.084, the defendant
27 may not be returned to the ~~[committing]~~ court earlier than 72 hours

1 before the date the hearing is scheduled.

2 Art. 46B.080. NOTICE TO ~~[COMMITTING]~~ COURT. (a) The head of
3 the [a] facility or the provider of the outpatient treatment
4 program, as appropriate ~~[to which a defendant has been committed~~
5 ~~under this subchapter]~~, not later than the 14th day before the date
6 on which a restoration period ~~[commitment order]~~ is to expire,
7 shall notify the applicable ~~[committing]~~ court that the restoration
8 period ~~[term of the commitment]~~ is about to expire.

9 (b) The head of the facility or treatment program provider
10 ~~[to which a defendant has been committed under this subchapter]~~
11 shall promptly notify the ~~[committing]~~ court when the head of the
12 facility or treatment program provider believes ~~[is of the opinion]~~
13 that:

14 (1) the defendant has attained competency to stand
15 trial; or

16 (2) the defendant will not attain competency in the
17 foreseeable future.

18 (c) When the head of the facility or treatment program
19 provider gives notice to the court under Subsection (a) or (b), the
20 head of the facility or treatment program provider also shall file a
21 final report with the court stating the reason for the proposed
22 discharge under this chapter and including a list of the types and
23 dosages of medications with which the defendant was treated for
24 mental illness while in the facility or participating in the
25 program. The court shall provide copies of the report to the
26 attorney representing the defendant and the attorney representing
27 the state.

1 (d) If the head of the facility or treatment program
2 provider [~~to which the defendant has been committed~~] notifies the
3 court that the initial restoration period [~~commitment order~~] is
4 about to expire, the notice may contain a request for an extension
5 of the period [~~commitment order~~] for an additional [~~a~~] period of 60
6 days and an explanation for the basis of the request.

7 Art. 46B.081. EXTENSION OF [~~COMMITMENT~~] ORDER. (a) On a
8 [~~the~~] request of the head of a facility or a treatment program
9 provider that is made under Article 46B.080(d) and notwithstanding
10 any other provision of this subchapter, the court may enter an order
11 extending the initial restoration period [~~term of the commitment~~
12 ~~order~~] for an additional [~~a~~] period of 60 days.

13 (b) The court may enter an order under Subsection (a) only
14 if the court determines that, on the basis of information provided
15 by the head of the facility or the treatment program provider:

16 (1) the defendant has not attained competency; and

17 (2) an extension of the restoration period [~~term of~~
18 ~~the commitment order~~] will likely enable the facility or program to
19 restore the defendant to competency.

20 (c) The court may grant only one extension under this
21 article for a period of restoration ordered under this subchapter
22 [~~the term of a defendant's commitment order~~].

23 Art. 46B.082. TRANSPORTATION OF DEFENDANT. (a) On
24 notification from the [~~committing~~] court under Article 46B.078, the
25 sheriff of the county in which the [~~committing~~] court is located or
26 the sheriff's designee shall transport the defendant to the
27 [~~committing~~] court.

1 (b) If a defendant committed to a maximum security unit of a
2 facility of the department has not been transported from the unit
3 before the 15th day after the date on which the court received
4 notification under Article 46B.080(a), the head of that facility
5 shall cause the defendant to be promptly transported to the
6 committing court and placed in the custody of the sheriff of the
7 county in which the [~~committing~~] court is located. The county in
8 which the [~~committing~~] court is located shall reimburse the
9 department for the mileage and per diem expenses of the personnel
10 required to transport the defendant, calculated in accordance with
11 rates provided in the General Appropriations Act for state
12 employees.

13 Art. 46B.083. SUPPORTING COMMITMENT INFORMATION PROVIDED
14 BY FACILITY HEAD OR TREATMENT PROGRAM PROVIDER. (a) If the head of
15 the facility or treatment program provider believes that the
16 defendant is a person with mental illness and meets the criteria for
17 court-ordered inpatient mental health services under Subtitle C,
18 Title 7, Health and Safety Code, the head of the facility or the
19 treatment program provider shall have submitted to the court a
20 certificate of medical examination for mental illness.

21 (b) If the head of the facility or the treatment program
22 provider believes [~~is of the opinion~~] that the defendant is a person
23 with mental retardation, the head of the facility or the treatment
24 program provider shall have submitted to the court an affidavit
25 stating the conclusions reached as a result of the examination.

26 Art. 46B.085. SUBSEQUENT RESTORATION PERIODS [~~COMMITMENTS~~]
27 AND EXTENSIONS OF THOSE PERIODS PROHIBITED. (a) The court may order

1 only one initial period of restoration [~~commitment~~] and one
2 extension under this subchapter in connection with the same
3 offense.

4 (b) After an initial restoration period [~~a commitment~~] and
5 an extension are ordered as described by Subsection (a), any
6 subsequent court orders for treatment must be issued under
7 Subchapter E or F.

8 SECTION 4. Article 46B.077(a), Code of Criminal Procedure,
9 is amended to read as follows:

10 (a) The facility to which the defendant is committed or the
11 treatment program to which the defendant is released on bail shall:

- 12 (1) develop an individual program of treatment;
- 13 (2) assess and evaluate whether the defendant will
14 obtain competency in the foreseeable future; and
- 15 (3) report to the court and to the local mental health
16 authority or to the local mental retardation authority on the
17 defendant's progress toward achieving competency.

18 SECTION 5. Articles 46B.084(a) and (b-1), Code of Criminal
19 Procedure, are amended to read as follows:

20 (a) On the return of a defendant to the [~~committing~~] court,
21 the court shall make a determination with regard to the defendant's
22 competency to stand trial. The court may make the determination
23 based solely on the report filed under Article 46B.080(c), unless
24 any party objects in writing or in open court to the findings of the
25 report not later than the 15th day after the date on which the
26 report is served on the parties.

27 (b-1) If the hearing is before the court, the hearing may be

1 conducted by means of an electronic broadcast system as provided by
2 Article 46B.013. Notwithstanding any other provision of this
3 chapter, the defendant is not required to be returned to the
4 [~~committing~~] court with respect to any hearing that is conducted
5 under this article in the manner described by this subsection.

6 SECTION 6. The change in law made by this Act applies only
7 to a defendant charged with an offense committed on or after the
8 effective date of this Act. A defendant charged with an offense
9 committed before the effective date of this Act is covered by the
10 law in effect when the offense was committed, and the former law is
11 continued in effect for that purpose. For purposes of this section,
12 an offense was committed before the effective date of this Act if
13 any element of the offense was committed before that date.

14 SECTION 7. This Act takes effect September 1, 2007.